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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 307

PURITAN CHURCH—THE CHURCH OF AMERICA, PURITAN CHURCH BUILDING FUND, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ORDERS BELOW

The order of the Tax Court (No. 307, R. 31-32),[1] denying petitioners' motion to vacate (No. 307, R. 3-31) its previous judgment entered on September 28, 1951 (No. 678, R. 105-106),[2] is not reported. The *per curiam* order of the Court of Appeals (No. 307, R. 51-52; Pet. App.) dismissing

[1] No. 307, October Term, 1955.

[2] No. 678, October Term, 1953.

taxpayers' petition for review (No. 307, R. 33-34) is not reported.

JURISDICTION

The *per curiam* order of the Court of Appeals was entered on March 1, 1955 (No. 307, R. 51-52; Pet. App.). A petition for rehearing was denied on March 22, 1955 (No. 307, R. 68). The petition for a writ of certiorari was filed on August 10, 1955, the time for filing having been extended to August 15 by an order of the Chief Justice, entered on June 7, 1955. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTION PRESENTED

On a prior review of a decision of the Tax Court, the taxpayers, in unsuccessful petitions for rehearing in the Court of Appeals, alleged fraud on the part of the Tax Court; in their petition for certiorari to review the judgment of the Court of Appeals, the taxpayers made no mention of the alleged fraud. Thereafter, following the denial of certiorari, the taxpayers filed a motion with the Tax Court to vacate its decision and repeated the allegations of fraud previously made in the Court of Appeals. The Tax Court, finding taxpayers' contentions to be without merit, refused to vacate its previous decision. Taxpayers then took an appeal to the Court of Appeals, which dismissed the appeal.

The question is whether there was error in the proceedings below.

STATEMENT

On May 22, 1951, the Tax Court, in an opinion by Judge Luther Johnson, held against petitioners on

a federal income tax matter (No. 678, R. 66-105). On September 28, 1951, the Tax Court's decisions were entered (No. 678, R. 105-107). Thereafter, a petition for review was filed with the Court of Appeals for the District of Columbia Circuit, which affirmed the Tax Court, *per curiam,* and entered judgment in favor of the Commissioner on November 5, 1953 (No. 678, R. 108-110).

Petitioners then filed two separate petitions for rehearing with the Court of Appeals, one on behalf of the Puritan Church-The Church of America (No. 678, R. 111-123) and the other on behalf of the Puritan Church Building Fund (No. 678, R. 124-134). In the first of these petitions for rehearing, petitioners made detailed statements and conclusions alleging fraud in connection with the Tax Court's decisions (No. 678, R. 116-122). On December 11, 1953, the Court of Appeals in two *per curiam* orders, denied the petitions for rehearing. On January 13, 1954, and January 20, 1954, additional motions and affidavits were filed with the Court of Appeals which repeated and amplified these allegations. (No. 678, R. 139-140.) Thereafter petitioners duly filed a petition for a writ of certiorari (No. 678, October Term, 1953). No mention of the alleged fraud was made in the petition. On May 24, 1954, this Court denied certiorari. *Puritan Church-The Church of America* v. *Commissioner,* 347 U. S. 975.

On June 7, 1954, petitioners filed in the Tax Court a motion to vacate its decision of September 28, 1951 (No. 307, R. 3-31). As had the earlier

petition for rehearing in the Court of Appeals (No. 678, R. 111-123), the supporting affidavit alleged fraud in connection with the drafting of the Tax Court's findings and opinion (No. 307, R. 7-31).

On June 23, 1954, in an order signed by Judge Withey, the Tax Court, finding their contentions to be "without merit," denied petitioners' motion to vacate (No. 307, R. 31-32). Thereafter, on July 9, 1954, petitioners filed a petition for review in the Court of Appeals for the District of Columbia Circuit (No. 307, R. 33-34).

On October 22, 1954, the Commissioner filed in the Court of Appeals a motion to dismiss taxpayers' petition for review. The Commissioner's motion came on for oral argument, and on February 14, 1955, the court issued a *per curiam* order granting the motion to dismiss. Thereafter, on March 1, 1955, the Court of Appeals vacated its order of February 14, 1955, and issued its final *per curiam* order granting the Commissioner's motion to dismiss (Pet. App.), the order reciting that the substance of petitioners' allegations had earlier been made on November 30, 1953, in the petition for rehearing (No. 678, R. 111-123) and in the motions and affidavits filed on January 13 and 20, 1954. On March 15, 1955, petitioners moved the Court of Appeals for a rehearing *en banc* (No. 307, R. 53-67). On March 22, 1955, the Court of Appeals issued an order denying this petition (No. 307, R. 68). Taxpayers then filed the instant petition for certiorari.

ARGUMENT

The Tax Court was justified in rejecting the taxpayers' motion to vacate its decision of September 28, 1951, and the Court of Appeals' refusal to disturb the Tax Court's action presents no question warranting further review.

The various allegations of fraud made by the taxpayers in their motion to vacate are but repetitious of allegations and assertions unsuccessfully made by them in the Court of Appeals when the Tax Court's decision of September 28, 1951, was before it on review. The Court of Appeals was apparently of the view that these allegations did not, on their face, merit further consideration. In any event, although they had the opportunity to do so, the taxpayers did not renew these allegations when they filed their petition for certiorari in this Court, and thus in effect abandoned them. Following the denial of certiorari, the Tax Court was warranted in carrying out the mandate of the Court of Appeals sustaining its decision of September 28, 1951. The Tax Court's order of June 23, 1954, declining to set aside its previous order which had become final upon exhaustion of the prior appellate proceedings, stated its finding, made after hearing further argument and upon consideration of the record, that "petitioners' contentions are without merit" (No. 307, R. 31-32). The Court of Appeals (Edgerton, Prettyman, and Fahy, JJ.) justifiably declined petitioners' invitation to review the matter once again. In the circumstances, the case should rest where the lower courts have left it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.
H. BRIAN HOLLAND,
Assistant Attorney General.

SEPTEMBER, 1955.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1955 937237 288

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FILED
SEP 14 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

No. 307

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v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY BRIEF FOR PETITIONERS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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REPLY BRIEF FOR PETITIONERS

SUMMARY OF ARGUMENT

I

The contention of the Respondent that the fraud charges of the petitioners are repetitious and has no basis, since under the *Hazel-Atlas* case, 322 U.S. 238 the Tax Court was the only Court where the charges could originate.

II

The position of the Respondent in the Court of Appeals as compared with the position which he now takes before this Court is so irreconcilable that it should make no impression on this Court and form no bar to the granting of Certiorari.

III

The Court of Appeals not only created an issue not raised by the motion to dismiss, but in so doing dehored the record. Such action should receive the condemnation of this Court. The order of the Court of Appeals tends to support the perpetrations of fraud on the institution of Justice and should be reviewed by this Court.

ARGUMENT

I

Respondent's Contention That the Taxpayers' Allegations of Fraud Are Repetitious. Has No Basis Either in Fact or Law

Respondent charges that the petitioners' affidavit detailing fraud, is but a repetition of such allegations and assertions unsuccessfully made by them when the Tax Court's decision of September 28, 1951, was before that tribunal on review.

The petitions for rehearing alluded to by the respondent are numbers 678 (R. 111-123) and 678 (R. 124-134). They constitute a part of the record and are open to examination by this Court. The additional motions and affidavits referred to by respondent (No. 678, R. 139-140) were never passed upon by the United States Court of Appeals for the District of Columbia Circuit. Therefore, no opportunity thereby was af-

forded the Petitioners to present to the said Court of Appeals the issues of fraud as reflected in the foregoing proceedings.

In prosecuting their petition for a Writ of Certiorari in this Court, Nos. 12, 340-1, 347 U.S. 975), the petitioners did not include the issue of fraud. The petitioners excluded the issue of fraud in said petition for Certiorari on the strength of the decision in the case of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 185. Moreover, the petitioner felt that in as much as the issue of fraud effected the administration of justice in the Tax Court and that the fraud originated in that court, it was reasonable and equitable to raise the issue of fraud in the Tax Court in an appropriate proceeding. Petitioners perceive in so doing all parties impeached by the fraudulent charges would have an opportunity to come forward and answer under oath these charges. There was no answer filed by Judge Luther A. Johnson of the Tax Court, notwithstanding the grave implications of those charges as affecting and influencing his judicial determination in the case. Neither did any of the other persons impugned by the charges take occasion to reply. Certainly the procedure adopted by the petitioners afforded a fair and adequate opportunity for all concerned to be heard. In the *Hazel-Atlas* case, *supra*, at pp 239-240, Justice Black made it clear that the charge of fraud should initiate in the court where the fraud was perpretrated.

II

Respondent Has Changed His Position From That Taken in the Court of Appeals

The Respondent raised only the juri- lictional question in the United States Court of Appeals. The re-

spondent strenuously argued in said court that the judgment of the Tax Court became final, under Section 1140(b) of the Internal Revenue Code upon the denial of Certiorari by this Court. If the respondent felt that there was any merit in the position of "abandonment" or "repetitions", he would have urged it in argument before that court. Even when Judge Prettyman inquired of Respondent, during the course of argument, whether his position included that of being without merit, the respondent replied that he stood on the jurisdictional question.

It is difficult to now understand the ambiguous position of the respondent, especially when we consider the concessions made by respondent which formed a part of the Tax Court orders dated April 6, 1955. (Petitioners' Brief 8-9).

Petitioners may well argue that if the Court of Appeals had had an opportunity to consider the said orders of the Tax Court its determinations of the issues herein may have been different.

It is significant that the respondent has cited no case in support of the position which he now takes before this Court. A member of the law firm accused in petitioner's affidavit of fraud has heretofore met the disciplinary hands of this Court. In the case of the *United States et al.* v. *Johnson,* 319 U.S. 302, 305, referring to this member of said law firm, this Court said:

> "The public interest has been placed at hazard by the amenities of the parties to a suit conducted under the dominion of one of them. We accordingly vacate the judgment below with instructions to the District Court to dismiss. So ordered."

Upon a consideration of the position taken by the respondent in the said Court of Appeals as compared with the position which he now takes before this court, one may easily conclude that it is he, and not the petitioners, who, is guilty of abandonment.

III

The Order of the Court of Appeals Dehors the Record

In order to grant the respondents' motion to dismiss it was necessary for the Court of Appeals to raise an issue which was not before it for decision. The respondent's motion to dismiss presented the sole question of jurisdiction. Petitioners do not question the right or power of an appellate court to decide issues not raised on appeal in the interest of justice. However, when any such issue raised of its own motion, by the appellate, dehors the record, and at the same time tends to thwart the administration of justice, the high powers of this Court should be invoked to review such action.

Petitioners firmly believe that in as much as the charges of fraud remain unchallenged, when every opportunity was given to answer, they have a cause tantamount to the *Hazel-Atlas* case, *supra*. They feel that the following language of that decision stands as their protector:

> "Every element of fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgment."

Petitioners believe that this Court empowered as the tribunal to construe and declare constitutional guarantees, intended their protection as well, when it further stated in its *Hazel-Atlas* opinion as follows:

> "This is not simply a case of judgment obtained with the aid of a witness, who on the basis of after discovered evidence is believed possibly to have been guilty of perjury. We find a deliberately planned and carefully executed scheme to defraud not only the patent office but also the Circuit Court of Appeals."

Petitioners believe that the issue of fraud raised in the Tax Court are of great moment and should command the attention of this Court to the extent of first granting the petition for Certiorari.

Respectfully submitted,

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Trustees
acting under the designation of the above entitled cause.

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FILED
SEP 26 1955
HAROLD B. WILLEY, Clerk

IN THE

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OCTOBER TERM, 1955

No. 307

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v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MOTION BY THE PETITIONERS FOR THE APPOINTMENT BY THIS COURT OF A COMMISSIONER TO EXAMINE THE EVIDENCE OF FRAUD BY THE RESPONDENT IN THE ABOVE ENTITLED CAUSE, WHICH WAS DISCOVERED TO THE PETITIONERS AFTER THEIR PETITION FOR WRIT OF CERTIORARI IN THE ABOVE ENTITLED CAUSE, HAD BEEN FILED IN THIS COURT.

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IN THE

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COME NOW, the petitioners, and beg this court to appoint a Commissioner to examine under oath, the evidence of fraud in the above entitled cause by the respondent, discovered to the petitioners, after their pe-

tition for writ of certiorari had been filed in this Court, to wit:

Without ever having viewed the books of the petitioners; without ever having asked to view them; without ever having either consulted his superior, or talked with the petitioners, John W. Burns, Revenue Agent, filed against the Puritan Church, the petitioner:

> A "one man" 100% gross bank deposit income tax assessment, plus 50% for fraud, plus 25% for not having made a return of taxable income.

The consequences of said Burns' lawlessness, are:

1. The Puritan Church is wounded and handicapped in its religious activities, by the Government of the United States, with a judgment for $264,000 which is accumulating interest at the rate of $11,166 a year and will continue to accumulate that interest, until $264,000 and accumulating interest shall be paid in nickels and dimes, which must be gathered in from its already tax overburdened communicants, and paid to the U. S. Government;

2. The Puritan Church Bible and Building Trust Fund in the custody of the Greenwich Trust Company, has been confiscated to the last penny, to the Treasury of the United States to pay $106,000 on the present unpaid judgment against the Puritan Church.

3. The otherwise free and clear $34,500 building site for a Puritan Meeting House at Washington, D. C., has been sold at public auction, by the Government of the United States;

4. All possessions of the Puritan Church have been attached by the Government of the United States, ex-

cept the spirit which caused the direct sires of the communicants of this Church, "to throw the tea into the Boston Harbor"; except the spirit which caused the direct sires of the communicants of the Church, to fire at Concord, Massachusetts, April 19, 1775, the first shot in the American Revolutionary War; except the spirit which caused the direct sires of the communicants of this Church, to spill their blood in the snow in the American Revolutionary War, from Valley Forge to Yorktown for the Bill of Rights in the Constitution of the United States; except the spirit which caused the Puritan, Theodore Parker, to utter the following words which were made immortal by Abraham Lincoln in his Gettysburg Address, to wit:

> "Government of the people, by all the people, for all the people."

Had said Burns called at the office of the Puritan Church, as the Internal Revenue Code had directed him to do; and, had said Burns assessed the Puritan Church according to the provisions of the Internal Revenue Code, it would have paid out of its $67,000 general fund then on hand, any tax, rather than waste that $67,000 and six years of time in the courts of the United States fighting the fraud in this litigation, by the respondent.

More than a year after said Burns' "100% bank deposit" income tax assessment had wrought such damage in the affairs of the Puritan Church; more than a year after the $106,000 cash Bible and Building Trust Fund had, without a trial or a court award, been confiscated to the Treasury, as a part payment on said Burns' solely determined $359,000 income tax assessment, the books, certified public accountant's audit and

financial records of the Puritan Church which had always been available and open to said Burns, were handed by the Puritan Church to Hon. Luther A. Johnson, Judge in the Tax Court of the United States. He handed those books to said Burns on the witness stand. He had all those books and records in his undisputed possession for three entire days.

In those books then in the lap of said Burns, under date of January 29, 1948, there was a record of Check, No. 26@, for $704.08 payable to the Collector of Internal Revenue at Chicago; this check was cashed by him; the proceeds of that check are in the United States Treasury (see cash records of the Collector at his Madison Ave. and Pulaski Rd. office, Chicago).

In his income tax assessments against the Puritan Church, said Burns had determined that this particular check for $704.08 was income of the Puritan Church subject to assessment at the rate of 100%, plus 50% for fraud; plus 25% for not having returned this $704.08, as taxable income.

According to the volunteered testimony of said Burns on the witness stand in the Tax Court, he "picked up" in the office of the United States Attorney at Chicago, a bank statement of the Puritan Church. On this statement, under the heading "Deposits" said Burns saw an item of $704.08; without knowing what this "deposit" item was for, said Burns, there and then, determined it was taxable income of the Puritan Church. Had he called at the address of the Puritan Church, which he knew, or at the Bank whose address was stamped on the statement, he would have learned that the deposit item, $704.08 had been made to "cover" a check sent by the Puritan Church to the

Collector of Internal Revenue at Chicago, in payment to the U. S. Government for its "Withholding Tax". Instead of doing as he should have done, said Burns put that item of $704.08 on his adding machine, along with other like "deposit items" to the amount of $359,000; this, said Burns determined was the "income tax assessment" for the Puritan Church. In short, Burns charged that check for $704.08, with an additional income tax of approximately $300. computed at the rate of 100%, plus 50% for fraud, plus 25% for not having made a return of that $704.08, as taxable income of the Puritan Church.

Upon the notice in the Puritan Church books, of this error in his "100% gross bank deposit assessment," said Burns refused in the Tax Court to change his original "100% gross bank deposit assessment;" he would not admit that this check to the United States Government was a disbursement; Hon. Luther A. Johnson, Judge of Tax Court, upheld him in his refusal.

In those same Puritan Church books, then in the possession of said Burns on the witness stand in the Tax Court, there was on page one of its Day Book, an item $4212.75 clearly marked on that book: "proceeds from the sale of Boston and Albany Stock loaned to the Church by Edith S. Parker to be sold to replenish the Free Bible Fund"; said Burns insisted that this loan from Edith S. Parker to the Puritan Church, was taxable income, and the checks in payment to Edith S. Parker were not disbursements of the Puritan Church; said Burns refused to modify his "100% gross bank deposit income tax assessment, plus 50% for fraud, plus 25% for not having returned" this item, as tax-

able income of the Puritan Church; Luther A. Johnson, trial Judge upheld said Burns in his adamant refusal.

In those same Puritan Church books, then in the Tax Court, there was an indelible record:

1. Checks 1/10/48 No. 1708 for $4780.59 payable to C. C. Waterbury and cashed by him at petitioner's bank at Montague, Mich.;
2. Check 1/8/48 No. 1718 for $3018.21 payable to C. C. Waterbury and cashed by him;
3. Check 1/13/48 No. 1701 for $3853.80 payable to C. C. Waterbury and cashed by him;
4. Check 1/5/48 No. 2109 for $9173.75 payable to C. C. Waterbury and cashed by him;
5. Check 1/5/48 No. 2A for $4090.10 payable to C. C. Waterbury and cashed by him;
6. Check under date of 1/23/48 No. 3A for $83.55 payable to C. C. Waterbury and cashed by him;
7. Check 1/23/48 No. 1704 for $5000.00 for the purchase of a Cashier's Check payable to C. C. Waterbury.

The undisputed testimony in the Tax Court was: C. C. Waterbury had loaned the Puritan Church $30,000 in cash, and had been repaid in full, in cash, by checks on the Puritan Church account in its Montague State Bank. The petitioner's books then under the scrutiny of Luther A. Johnson, Trial Judge, were clearly marked: "for repayment of loan made by C. C. Waterbury to start construction of Puritan Meet-House".

With that evidence in front of him, said Burns insisted that this $30,000 was income of the Puritan

Church and had been assessed by him for 100% of gross bank deposits, plus 50% for fraud, plus 25% for not having returned these items as taxable income of the Puritan Church. Judge Johnson upheld said Burns in his refusal to concede that these $30,000 of items were disbursements, and not taxable income.

In those same books, there was this item:

> 1/15/48, check no. 1688 for $15.00 payable to the Chicago Bible Society and marked: "for Bibles for free distribution in prisons;" said Burns refused to grant that this check was for a disbursement; he insisted that it was taxable income and had been assessed as a part of his "100% gross bank deposit assessment at $15.00, plus 50% for fraud, plus 25% penalty for not having returned" that $15.00 as taxable income. Judge Johnson upheld said Burns in his contention.

These items alone, showed that said Burns "100% gross bank deposit assessment" was irretrievably in error, $34,931.83. The other items in those books, had they been examined according to the provisions of the Internal Revenue Code, would have revealed that said Burns "100% gross bank deposit assessment" was in error, 100%; that the Puritan Church did not owe a single cent of income tax. Rather, it had a net operating loss for that period, of over $32,000 which had been made up by loans to it, from Anita Bird, a daughter in the 10th generation of her Puritan family born on American soil in direct descent from Deacon Thomas Parker who founded the Puritan Church "in the Colonies" in the year 1642.

Notwithstanding the admitted illegality of these assessments, an income tax of about $300.00 on the $708.04 check to the U. S. Gov't., and the income tax of about

$17,000 on the other $34,000 of items listed above, was paid to the U. S. Gov't. by the petitioner out of the $106,000 Bible and Building Trust Fund, which had been seized by the U. S. Gov't. in the Greenwich Trust Company, as a "part payment" on the "one man" $359,000 income tax assessment made by said Burns against the Puritan Church, the petitioner herein.

The following is a transcript of part of the testimony of said Burns, the agent of the respondent, under oath in the Tax Court, and not corrected, denied or disputed in the entire Tax Court record:

> "I am an Internal Revenue Agent (Tr. 180). I knew where the office of the Church was in LaGrange (Tr. 199). I never visited that office. I never went there to make a request for records (Tr. 199). I did not consider that anything could be gained, by making a demand for its books (Tr. 189); so I made, without view of any of the Church's books and records, a 100% bank deposit income tax of $359,000. against the Puritan Church, the Church of America which included 50% for fraud and 25% for not having made a return" (Tr. 182);
>
> "I examined the books and records of the petitioner which were turned over to me Friday (June 2, 1950). The books appeared to be cash receipts and disbursements in the form of a day book; there were detailed ledger sheets; the ledgers were in bound ledger form; these books are not of original entry; there are books which could be called books of original entry; there were some loose sheets; there were miscellaneous papers, payrolls, etc. from December 1945 to April 7, 1947; there was a statement of cash receipts and disbursements for the calendar year of 1946; a net income for the year 1946 could be ascertained; the net income for tax purposes for the year 1946, could be deter-

mined; I did look through all the vouchers and cancelled checks; there were also three types of packages which we did not examine; they were through December 1946 to April of 1947; if I had sufficient time I might be able to get a summary out of these books of cash receipts and disbursements; the books here are from December 1945 up to April 7, 1947." (Tr., at pages 468 to 475; 790; 791.)

By this undisputed testimony, said Burns admitted that, in making his 100% gross bank deposit assessment against the defenseless Puritan Church, he had violated the following law which has never been either annuled, cancelled or modified by any court of competent jurisdiction:

In *Stockstrom* v. *Commissioner of Internal Revenue,* 190 F. 2d, 283, 289, the court said:

> "* * * the Commissioner obtained from Stockstrom's books the facts and figures concerning the 1938 gifts. If he later decided that tax liability existed he could have made a return for the taxpayer; indeed it was the duty of the Commissioner's subordinate, the collector, to do so. 26 U.S.C.A., Sec. 3612."

By this testimony said Burns conceded that, in making his "100% gross bank account assessment" against the prostrate Puritan Church, he had violated the law established in the following case and still in full force and effect:

In *Taylor* v. *United States,* 293 U.S. 509, 575, this Court said:

> "In this case the taxpayer's evidence shows the Commissioner's determination to be arbitrary and excessive it may not reasonably hold that he is

bound to pay a tax that confessedly he does not owe".

By this testimony, said Burns under oath on the witness stand, confessed, that in making his "100% gross bank deposit assessment" against the outraged Puritan Church, he had violated every provision of Sec. 3644, Title 26, Internal Revenue Code and had trampled under foot, the law established by the following cases, in order to make a "100% gross bank deposit income tax assessment":

In *Martin* v. *Chandis Securities Company,* 128 F. 2d, 731, 735, the Court said:

> "The rights of an internal revenue agent, both to his Government and to the petitioner are statutory, and in order to obtain relief granted by this section and section 3014 of this title, he must bring himself within the terms thereof."

In *U. S.* v. *Perryman,* 100 U.S. 235, 238, this Court said:

> "As the right is statutory, the claimant (the United States) cannot recover unless he brings himself within the terms of the statute; this he has not done."

By his admitted, undenied, undisputed testimony abstracted above, said Burns acknowledged, that his "100% gross bank deposit assessment" against the Puritan Church was illegal, and all the proceedings by the respondent to collect Burns personally made $359,000 income tax assessment were void *ab initio.*

All this skullduggery in the Tax Court of the United States was made valid by a decision of the Tax Court dated September 28, 1951, and by the following per

curiam opinion of the U. S. Court of Appeals for the District of Columbia Circuit:

> "* * * Tax Court made findings in great detail and rendered a careful opinion. Upon examination of the record we conclude that the findings are supported by ample substantial evidence. We find no error in any other respect.
>
> *Affirmed.*"

Dated November 5, 1953

(See Reply Brief for Petitioner in U. S. Court of Appeals No. 11,587)

The books of the Puritan Church then in the possession of said Burns, had been marked by the order of Luther A. Johnson, Judge of the Tax Court:

> "Tax Court of the U. S., Div. 10,
> Docket 23814, marked for identification
> June 6, 1950, Petitioner's Exhibit 52."

To have had those books admitted into the Tax Court's record would have proven that said Burns' "100% gross bank deposit assessment" was illegal and all proceedings by the respondent based on that illegal assessment void. In that acute situation in the Tax Court, W. A. Schwerdtfeger, special attorney for the respondent, there and then in the Tax Court on the payroll of the U. S. Gov't., and at the same time, in the employ of the Chicago and Washington, D. C., law firm of Kirkland, Fleming, Martin and Ellis, arose in the astonished court-room and said:

> "I object to their introduction" (TRS 698) (meaning he objected to the introduction of the books of the Puritan Church which showed on their face, that said Burns' "100% gross bank deposit assessment" was in error at least $34,931.83 and void, unless corrected then and

there by said Burns or by the order of the Trial Judge).

At Tr. page 698 of the same Court record, Luther A. Johnson, Trial Judge in the Tax Court, in reply to said Schwerdtfeger's motion said:

"I will sustain the objection."

This colloquy between the agent for the respondent and the trial judge is but one of the overt acts in the criminal conspiracy between the law firm of Kirkland, Fleming, Green Martin and Ellis, W. A. Schwerdtfeger, an agent of the respondent, Luther A. Johnson, trial judge of the Tax Court, the notorious Charles Oliphant and others, to sabotage the Puritan Church in the Tax Court with an unconscionable judgment for $264,000 for income taxes.

By his motion, W. A. Schwerdtfeger suppressed evidence in important litigation in the Tax Court in which the United States will be the beneficiary, unless rectified by this Court.

On the witness stand in the Tax Court, V. V. Sugg, the U. S. Postal Inspector and witness for Schwerdtfeger in the Tax Court litigation, testified as follows:

"My name is V. V. Sugg; I am a Post Office Inspector (Tr. 239); I asked Mr. Parker how much they had taken in; he showed me something like a Day Book and said that they had taken in eight odd thousand dollars up to December 16 (1947); it was just a big book which I would term a daily cash receipt book (307); he had a book in which he said the daily receipts were posted; he showed me some figures in a book on a table; I did not touch the book; I did not ask to carry it away with me (308); there were weekly statements of clerical expenditures and things like that, prob-

ably 15 to 30 pages of it; I do not believe that I ever asked Mr. Parker for a subsequent statement; I saw Mr. Parker keeping a journal of daily receipts (359); that was available to me the day I saw it; I never again asked to see that particular book, nor any other book like that, book or ledger of daily receipts (360)."

The evidence now in possession of petitioners and ready for submission to a Commissioner for this Court, will prove that despite the above testimony, said Schwerdtfeger himself, in the office of Kirkland, Fleming, Green, Martin and Ellis in the room of Miss Cohen while she was absent in Europe, wrote into the decision of the Tax Court dated September 28, 1951 and signed Luther A. Johnson, Judge, at Tax Court record pages 86, 94 and 98, the following words:

"The petitioner did not keep books."

That allegation in the findings of the Tax Court is the basis for the 50 per cent fraud charge made in that Tax Court decision against the Puritan Church; there is not in the entire Tax Court record any evidence to prove fraud by the petitioner, the Puritan Church; the above statement was written into the Tax Court findings by said Schwerdtfeger, to fill the void created by the absence in the Tax Court record of fraud by the Puritan Church.

Previously in their charges of fraud in this litigation, the petitioners had never accused the agents of the respondent, the Commissioner of Internal Revenue, of fraud. The petitioners had their suspicions, but no evidence. Now, the petitioners have in their possession the necessary evidence to prove:

W. A. Schwerdtfeger, lawyer, agent of the respondent in charge of the litigation of the above entitled cause in the Tax Court, presently on the payroll of the Government of the United States, was in the employ of the law firm of Kirkland, Fleming, Green, Martin and Ellis, while he was on the payroll of the respondent, and in charge of the litigation of the above entitled cause in the Tax Court of the United States.

That evidence is now ready and available for scrutiny by a Commissioner of the Supreme Court of the United States.

The Judgment against the Puritan Church for $264,000 with current interest at the rate of $11,000 a year, is what this Court has determined, "unconscionable".

In the case of *Hazel-Atlas Company* v. *Hartford Empire Co.*, 322 U.S. 238, the Supreme Court of the United States at pages 244, 245, 246 thundered:

> "When enforcement of the judgment is manifestly unconscionable" 1 Pickford v. Talbott, 225 U.S. 251, they have wielded the power without hesitation."
>
> "Every element of fraud here disclosed, demands the exercise of the historic power of equity to set aside fraudulently begotten judgments."
>
> * * * * * * * * *
>
> "Furthermore, tampering with the administration of justice in a manner indisputably shown here involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely

> it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."

If in the opinion of this Court, public unrest would be caused by the revelation of corruption in the Tax Court, which will be presented by the petitioners to a Commissioner of this Court, the petitioners beg this Court to return with a short-order, the above entitled cause to the Tax Court for re-trial there, before any Judge of that Court, except Hon. Luther A. Johnson.

Respectfully submitted,

EDITH S. PARKER,

REV. HARRISON PARKER,
Trustees acting under the aesignation of the above entitled cause,
820 Connecticut Avenue,
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